

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHY LEE,

Plaintiff,

v.

CITY OF SAN LEANDRO, et al.,

Defendants.

No. C-10-0104 MMC

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS; AFFORDING
PLAINTIFF LEAVE TO FILE SECOND
AMENDED COMPLAINT**

Before the Court are two motions to dismiss plaintiff Kathy Lee's First Amended Complaint ("FAC"), or, in the alternative, for a more definite statement: (1) a motion by defendants City of San Leandro, Chief of Police Ian R. Willis, Detective Neil Goodman, Detective Derrel Ramsey, Officer Louie Brandt, Officer Louie Guillen, and Sergeant Rick DeCosta, filed April 20, 2010; and (2) a motion by defendant Officer Deborah Trujillo, filed April 26, 2010. No opposition to either motion has been filed. Having read and considered the papers filed in support of the motions, the Court rules as follows:¹

1. To the extent the First and Second Causes of Action are based on a claim that defendants violated 42 U.S.C. § 1985, which prohibits conspiracies to violate civil rights, and § 1986, which prohibits the refusal to stop a known conspiracy to violate civil rights, the First and Second Causes of Action are subject to dismissal, for the reason that plaintiff fails

¹By order filed May 18, 2010, the Court took the motions under submission.

1 to allege sufficient facts to support a finding that a conspiracy existed. Specifically,
 2 plaintiff's conclusory allegation that each defendant "act[ed] in concert with the co-
 3 defendants, with the shared objective to injure the plaintiff" (see FAC ¶ 26) is insufficient as
 4 a matter of law. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 551 n.2, 555-56 (2007)
 5 (holding, to state a claim of conspiracy, plaintiff must allege "enough facts to raise a
 6 reasonable expectation that discovery will reveal evidence of illegal agreement"; finding
 7 insufficient, in context of claim for alleged conspiracy to violate antitrust laws, allegation that
 8 "defendants and their co-conspirators engaged in a . . . conspiracy to prevent competitive
 9 entry in [the relevant] markets by, among other things, agreeing not to compete with one
 10 another and to stifle attempts by others to compete with them and otherwise allocating
 11 customers and markets to one another").

12 2. To the extent the First and Second Causes of Action are based on a claim that
 13 defendants, by engaging in an unreasonable search and seizure and by using excessive
 14 force during the course of an arrest, deprived plaintiff of her Fourteenth Amendment right to
 15 substantive due process, the First and Second Causes of Action are subject to dismissal.
 16 See Graham v. Connor, 490 U.S. 386, 395 (1989) (holding "all claims that law enforcement
 17 officers have used excessive force – deadly or not – in the course of an arrest,
 18 investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth
 19 Amendment and its 'reasonable' standard, rather than under a 'substantive due process'
 20 approach") (emphasis in original).

21 3. To the extent the Second Cause of Action is based on a claim that the City of
 22 San Leandro "ratified and condoned" the individual defendants' alleged violation of
 23 plaintiff's First Amendment rights (see FAC ¶ 29), the Second Cause of Action is subject to
 24 dismissal. Specifically, plaintiff fails to allege any facts to support a finding that any
 25 individual defendant deprived plaintiff of her First Amendment rights, let alone that such
 26 deprivation occurred as a result of a municipal policy. See Monell v. Dep't of Social
 27 Services, 436 U.S. 658, 691 (1978) (holding municipality may not be held liable under
 28 § 1983 "unless action pursuant to an official municipal policy of some nature caused a

1 constitutional tort”).

2 4. To the extent the Third Cause of Action, by which plaintiff alleges a claim of
3 intentional infliction of emotional distress, the Fourth Cause of Action, by which plaintiff
4 alleges a claim of false arrest and imprisonment, and the Fifth Cause of Action, by which
5 plaintiff alleges a claim of assault and battery, are asserted against the individual
6 defendants named herein, defendants have failed to show such claims are subject to
7 dismissal. Contrary to defendants argument, a plaintiff need not allege facts to support a
8 finding that the individual defendants will be unable to rely on a defense based on the
9 statutory immunities set forth in § 820.2 and § 820.4. See United States v. McGee, 993
10 F.2d 184, 187 (9th Cir. 1993) (holding plaintiff “not required to plead on the subject of an
11 anticipated defense”; citing Rule 8(c)); DeJung v. Superior Court, 169 Cal. App. 4th 533,
12 538 (2008) (characterizing defense provided by § 820.2 as “affirmative defense of
13 discretionary immunity”). In any event, plaintiff alleges that each individual defendant used
14 excessive force during the course of her arrest (see FAC ¶ 23), and such allegation, if
15 proven true, would preclude the individual defendants from establishing their entitlement to
16 immunity. See Robinson v. Solano County, 278 F.3d 1007, 1016 (2002) (“California denies
17 immunity to police officers who use excessive force in arresting a suspect.”).

18 5. To the extent the Third, Fourth, and Fifth Causes of Action are asserted against
19 the City of San Leandro, defendants have failed to show the claims are subject to
20 dismissal. Specifically, defendants’ argument that “no statute in California authorizes
21 [such] cause[s] of action against a public entity” (see Defs.’ Mem of P. & A., filed April 20,
22 2010, at 9:20-22), is incorrect. As the Ninth Circuit has recognized, pursuant to § 815.2 of
23 the California Government Code, a municipality can be held liable under the “doctrine of
24 respondeat superior” for the wrongful conduct of its employees. See Robinson, 278 F.3d at
25 1016.

26 6. Finally, to the extent defendants seek issuance of an order directing plaintiff to file
27 a more definite statement, the motions will be denied, as defendants have failed to show
28 they cannot reasonably form a response to the remaining claims. See Fed. R. Civ. P. 12(e)

(providing more definite statement is properly required where complaint is "so vague or ambiguous that the [defendant] cannot reasonably form a response").

CONCLUSION

For the reasons stated above, defendants' motions to dismiss or, in the alternative, for a more definite statement, are hereby GRANTED in part and DENIED in part, as follows:

1. To the extent the motions seek dismissal of plaintiff's claims that defendants violated 42 U.S.C. §§ 1985 and 1986, and deprived plaintiff of substantive due process, which claims are included within the First and Second Causes of Action, the motions are GRANTED, and such claims are hereby DISMISSED.

2. To the extent the motions seek dismissal of plaintiff's claim that defendants deprived plaintiff of her First Amendment rights, which claim is included within the Second Cause of Action, the motions are GRANTED, and such claim is hereby DISMISSED

3. In all other respects, the motions are DENIED.

4. If plaintiff wishes to file a Second Amended Complaint to cure the deficiencies set forth above with respect to her § 1985, § 1986, and First Amendment claims, plaintiff shall file any such Second Amended Complaint no later than June 22, 2010. Plaintiff may not, however, amend to add any new claims or defendants without leave of court.

IT IS SO ORDERED.

Dated: June 1, 2010


MAXINE M. CHESNEY
United States District Judge